

1 MICHAEL C. ORMSBY
United States Attorney
2 Eastern District of Washington
ALEXANDER C. EKSTRÖM
3 Assistant United States Attorney
4 402 E. Yakima Avenue, Suite 210
Yakima, Washington 98901
(509) 454-4425

5 IN THE UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 NO: CR-13-6070-WFN

10 vs.

11 KENNETH RICHARD ROWELL,

12 Defendant.

13 GOVERNMENT'S RESPONSE TO
14 DEFENDANT'S SUPPLEMENTAL
15 SENTENCING MEMORANDUM

16 Plaintiff, United States of America, by and through Michael C. Ormsby, United
17 States Attorney for the Eastern District of Washington, and Alexander C. Ekstrom,
Assistant United States Attorney for the Eastern District of Washington, hereby
submits the following response to the Defendant's supplemental sentencing
memorandum (ECF No. 55) as follows:

18 I. DEFENDANT'S OBJECTION/SUGGESTION

19 1. Page 11, Paragraph 54-57, Conviction for First Degree Sodomy:

20 The Defendant does not seek to directly reply to the Government's response on
this issue, in which the Government contended that, even if he supported his
21 allegations that his attorney failed to communicate with him regarding this
prosecution, he could not meet his burden to overcome the "presumption of
22 regularity" of a conviction. (ECF No. 51, pg. 2), *citing United States v. Allen*, 153
23 F.3d 1037, 1041 (9th Cir. 1998). Essentially, the Defendant now argues that this
24 Court should remove the information not because it is inaccurate, but rather because it
25 is "prejudicial" to his placement at BOP. (ECF NO. 55, pg. 2). Neither of the cases
26 Government's Response To Defendant's
27 Supplemental Sentencing Memorandum

cited by the Defendant support his assertion that this Court should remove this accurate information from the PSIR. *Id.* at pg. 1-2, *citing United States v. Brown*, 715 F.2d 387 (5th Cir. 1983) and *citing United States v. Petti*, 513 F.2d 572 (9th Cir. 1975). The Defendant is required to register as a sex offender as a result of his conviction, and has been registering as required. The simple fact that evidence of this conviction also results in a less favorable classification is not a rationale for removing the same from a PSIR.

Respectfully submitted this 14th day of May, 2014

MICHAEL C. ORMSBY
United States Attorney

s/Alexander C. Ekstrom
ALEXANDER C. EKSTROM
Assistant United States Attorney

I hereby certify that on May 14, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Rick Lee Hoffman.

s/ Alexander C. Ekstrom
Alexander C. Ekstrom
Assistant United States Attorney
United States Attorney's Office
402 E. Yakima Ave., Suite 210
Yakima, WA 98901
(509) 454-4425

Government's Response To Defendant's Supplemental Sentencing Memorandum